



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 31, 2003

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2003-0666

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175835.

The Texas Department of Human Services (the "department") received a request for information that the department submitted to this office in connection with its request for our decision in Open Records Letter No. 2002-6170 (2002). You claim that all or part of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that Open Records Letter No. 2002-6170 (2002) addresses your exceptions to the disclosure of some of the submitted information. Specifically, Open Records Letter No. 2002-6170 (2002) concludes in part that: (1) the department must withhold some of the submitted information under section 552.117(1) of the Government Code if the employee to whom the information pertains timely requested confidentiality for the information under section 552.024; (2) if the employee's social security number is not protected by section 552.117(1), then it may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (3) if section 552.117 is not applicable to the employee's personal telephone numbers, then they must be withheld under section 552.101 in conjunction with common-law privacy; and (4) telephone numbers of the employee's family members must be withheld under section 552.101 and common-law privacy. We have marked the information that is encompassed by the prior ruling. You do not inform us, and we are not otherwise aware, of any change in the law, facts, or

circumstances on which the prior ruling is based. Therefore, to the extent that the prior ruling encompasses the submitted information, the department must continue to rely on Open Records Letter No. 2002-6170 (2002). See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination for purposes of § 552.301(a)).

Next, we address your claims with regard to the submitted information that is not encompassed by Open Records Letter No. 2002-6170 (2002). Section 552.117(1) excepts from disclosure the home address, home telephone number, and social security number of a current or former employee of a governmental body, as well as information that reveals whether the current or former employee has family members, if the current or former employee timely requested confidentiality for this information under section 552.024.<sup>1</sup> Whether a particular item of information is protected by section 552.117 must be determined at the time that the governmental body receives the request for the information. See Open Records Decision No. 530 at 5 (1989).

You state that the submitted information relates to an employee of the department who has elected to keep his personal information confidential. However, you do not state whether the employee made the request for confidentiality under section 552.024 prior to the date of the department's receipt of this request for information. If the employee requested confidentiality under section 552.024 before the department received this request, then you must withhold the employee's home address, home telephone number, social security number, and any information that reveals whether the employee has family members under section 552.117. We have marked that information. You may not withhold the marked information under section 552.117, however, if the employee did not make a timely election under section 552.024 to keep the information confidential.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy under section 552.101 protects the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other

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<sup>1</sup>We note that the department did not raise section 552.117 within the time prescribed by section 552.301 of the Government Code. See Gov't Code §§ 552.301(b), .302. Nevertheless, as section 552.117 is a mandatory exception to public disclosure that a governmental body may not waive, we address your claim under this section. See *id.* §§ 552.007, .352.

types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). We have marked a small amount of information that the department must withhold under section 552.101 in conjunction with common-law privacy.

This office also has stated that under certain “special circumstances,” section 552.101 protects information that ordinarily would be subject to public disclosure. *See* Open Records Decision No. 169 at 6-7 (1977). Such “special circumstances” encompass a very narrow set of situations. *Id.* at 6. They do not include a desire for privacy or “a generalized and speculative fear of harassment or retribution.” *Id.* They do include situations in which release of the information would likely cause someone to face “an imminent threat of physical danger.” *Id.* We determine whether a request for information presents such “special circumstances” on a case-by-case basis. *Id.* at 7. You inform us that the department has received previous requests for information involving the employee to whom the submitted information pertains. You believe that these requests follow a pattern of harassment. We have considered your arguments. We conclude, however, that you have not established the existence of special circumstances that necessitate the withholding of any further information under section 552.101.

In summary, the department must continue to rely on Open Records Letter No. 2002-6170 (2002) with regard to the submitted information that is encompassed by the prior decision. With regard to the remaining information, the department must withhold the employee’s home address, home telephone number, and social security number, as well as any information that reveals whether the employee has family members, if the employee made a timely request under section 552.024 to keep that information confidential. The department must withhold a small amount of information under section 552.101 in conjunction with common-law privacy. The rest of the requested information is not excepted from disclosure and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

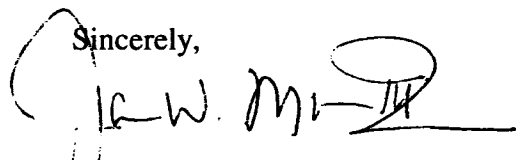
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 175835

Enc: Marked documents

c: Mr. Jose Sanchez  
c/o Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030  
(w/o enclosures)